

**STATE OF FLORIDA  
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION  
BOARD OF PILOT COMMISSIONERS  
PILOTAGE RATE REVIEW COMMITTEE**

IN RE: APPLICATION FOR A CHANGE OF  
RATES OF PILOTAGE AT PORTS OF  
JACKSONVILLE AND FERNANDINA BY ST.  
JOHNS BAR PILOT ASSOCIATIONS AND  
FERNANDINA PILOT, LLC

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Case No.: PRRC-\_\_\_\_\_

**ST JOHNS BAR PILOT ASSOCIATION’S RESPONSE  
IN OPPOSITION TO CROWLEY’S MOTION TO DISMISS  
OR ALTERNATIVELY TO STAY THE RATE REVIEW PROCEEDINGS**

With the facts and the law squarely against it, Crowley<sup>1</sup> takes an unfortunate tack— subvert the administrative process by filing a frivolous motion after 5:00 p.m. on the Friday before a holiday weekend, in an effort to delay the upcoming rate review hearing and continue to profit from below-market pilotage rates that have not been increased in 16 years.

Crowley’s Motion to Dismiss or Alternatively to Stay the Rate Review Proceedings (the “Motion”) should be denied. The Board of Pilot Commissioners, Pilotage Rate Review Committee (the “PRRC”) provided ample notice to Crowley, consistent with the statutes and agency rules. Crowley tacitly concedes it had notice of the proceedings as well as notice of the publication. It struggles to find some miniscule imperfection in the notice process, but fails in that quest.

And in the most feeble of Hail Mary plays, Crowley asks the PRRC to delay the upcoming rate review hearing until an appellate court decides issues in a separate case, many of which were never argued before the PRRC in that separate case. The fact that Crowley has filed a meritless

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<sup>1</sup> “Crowley” refers collectively to Crowley Liner Services, Inc.’s, Crowley Puerto Rico Services, Inc., and Crowley Caribbean Services, LLC.

appeal of the newly approved pilotage rates in Port Everglades is not grounds to hijack rate review proceedings at every port in the state.

For the reasons below, as well as the evidence and argument the St. Johns Bar Pilot Association (“The Pilots”) will provide at the rate hearing proceedings, the Pilots request that the PRRC deny Crowley’s Motion.

**I. The PRRC’s Rate Review Hearing Should Not be Dismissed**

Crowley’s motion to dismiss the rate review proceedings should be rejected because the PRRC’s notices regarding the rates of pilotage were proper and in accordance with Rule 61G14-22.007(5), Florida Administrative Code. The PRRC gave Crowley or any other interested parties an opportunity to respond to the Pilots’ revised application and be a part of the proceedings, but Crowley failed to file any timely answer or alternative application.

The PRRC published at least three notices in the last several months. First, on November 22, 2019, the PRRC notified the public of the Pilots’ revised application, which was filed on October 1, 2019, and informed interested parties that they could “file an answer, an additional or alternative application or any other applicable pleading or response,” within 30 days by December 23, 2019 (the “November 22nd notice”). Second, on November 25, 2019, the PRRC noticed a meeting of the investigative committee’s fact-finding proceeding for the Pilots’ revised application to be held on December 4, 2019 (the “November 25th notice”). Third, on December 4, 2019, the PRRC noticed a site visit to the Port of Jacksonville on January 21, 2020 and rate hearing proceedings on the Pilots’ revised application to begin on January 22, 2020 (the “December 4th notice”). The December 4th notice also incorporated the November 22nd notice by providing its

citation in the Florida Administrative Register.<sup>2</sup> The PRCC also noticed the proceedings in newspapers of general circulation in Duval and Nassau Counties.

Crowley mistakenly claims that the information within the November 22nd and December 4th notices were required to be in the same document. Crowley cites no statute or case law in support of its argument that the PRRC notices were improper, and relies on nothing but its own erroneous reading of Rule 61G14-22.007(5). Nothing in Rule 61G14-22.007(5) prohibits the PRRC from first issuing a public notice of a rate application and subsequently publicly noticing the dates of the rate hearing workshop, particularly when the rate hearing workshop notice references the earlier rate application notice. Crowley has no one to blame but itself for its failure to participate in the proceedings at the combined Ports of Jacksonville and Fernandina.<sup>3</sup>

Crowley argues that the notices were defective because a site visit to the Port of Fernandina was not noticed. This argument is flawed for at least two reasons. First, the PRRC did not notice a site visit to the Port of Fernandina because there is not a scheduled site visit there. It is axiomatic that an agency does not need to notice an event that will not occur, and Crowley has cited no case law or statute requiring the PRRC to conduct a site visit to every port that may be impacted by rate review proceedings. Second, the Ports of Jacksonville and Fernandina are part of a combined port area, and this is not two separate rate review proceedings. As shown by the investigative committee report, the Port of Fernandina accounts for less than 5% of the total traffic in the two ports. Furthermore, Crowley has not demonstrated—nor can it—that any of its ships call on the Port of Fernandina, meaning that it lacks standing to even make any arguments with regard to alleged notice defects involving a site visit to Fernandina.

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<sup>2</sup> The Pilots will provide copies of the three notices at the upcoming rate review hearing.

<sup>3</sup> Crowley does not make any claim that the November 25th notice of the investigative committee meeting contained any defect.

Crowley also claims that “through counsel in other rate review proceedings,” Crowley “requested to receive notice of hearings related to rates of pilotage.” Motion at 4 (complaining that “the PRRC did not mail Crowley, through counsel, the November 22nd Notice or the December 4th Notice at or around the time of publication”). But Crowley did not identify when it made this request, whether the request was specific to the rate review proceedings for the combined Ports of Jacksonville and Fernandina, or attach its alleged request to its Motion for the PRRC to evaluate.

This is critical, because section 310.151(3), Florida Statutes, states: “In addition to publication as required by law, notice of a hearing to determine rates shall be mailed to each person *who has formally requested notice of any rate change in the affected port area.*” (Emphasis added). The Pilots filed its initial application in September of 2018. The revised application was filed in October of 2019. The investigative committee meeting was held December 4, 2019. But it appears that Crowley did not request that the PRRC send it notice of any rate changes in the Port of Jacksonville until January 13, 2020. *See Exhibit 1.*<sup>4</sup> Crowley’s counsel cannot claim entitlement to notice pursuant to section 310.151(3) before counsel had even requested it.

Finally, Crowley has failed to demonstrate any prejudice as a result of the PRRC’s notices. Even if the PRRC’s notices had technical defects—which they did not—a petitioner must show that it was prejudiced by any notice defects. *See, e.g., Ismael v. Certain Lands Upon Which Special Assessments are Delinquent*, 51 So. 3d 583, 586 (Fla. 3d DCA 2011); *Krischer v. Sch. Bd. of Dade Cty.*, 555 So. 2d 436, 437 (Fla. 3d DCA 1990). Crowley cannot reasonably claim that it was unaware the Pilots had filed rate applications for the combined Ports of Jacksonville and Fernandina, and any technical defect in the PRRC’s notices was not responsible for Crowley’s

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<sup>4</sup> Crowley did not even mention the Port of Fernandina in its request for formal notice.

failure to participate in the rate review proceedings. Moreover, Crowley still has not even made any objections or arguments as to the substance of the Pilots' revised application or the findings of the PRRC's investigative committee. Crowley's Motion is simply an irresponsible effort to delay.

## **II. The PRRC's Rate Review Hearing Should Not be Stayed**

Crowley's motion requesting a stay of the proceedings is equally meritless. Crowley unreasonably argues for an indefinite delay in the rate review proceedings for four reasons, none of which are supported by the facts or the law. First, the PRRC's notices were not defective, and even if they were, Crowley cannot demonstrate any prejudice as a result of the notices. Second, Crowley cites no case law or other authority supporting its argument that the rate review proceedings here should be delayed based upon its appeal of unrelated administrative proceedings. The single case Crowley cites is inapplicable, as it involves a plaintiff seeking to recover damages from an insurance policy, the validity of which had been challenged in another proceeding. *See* Motion at 4 (citing *Indep. Fire Ins. Co. v. Arvidson*, 564 So. 2d 1254, 1255 (Fla. 4th DCA 1990)). Moreover, Crowley's argument that the composition of the PRRC as mandated by section 310.151 is unconstitutional is not a serious argument worthy of consideration. Crowley failed to request—in the Port Everglades proceeding or the current one—that any member of the PRRC should recuse him or herself from the rate review proceedings. Indeed, any such request would be frivolous as a matter of law. Crowley has not cited any, and the undersigned is not aware of, any case law that would support Crowley's claim.

Third, there is no basis to delay the proceedings here due to Crowley's unsupported and meritless argument that the PRRC did not properly evaluate the Pilots' unfunded retirement benefits in another administrative proceeding. Section 310.151(5) clearly sets forth the elements

that the PRRC can consider during the rate review proceedings, which includes “[a]ny other factors the committee deems relevant in determining a just and reasonable rate.” § 310.151(5)(b)12, Fla. Stat.

Last, Crowley asks the PRCC to hold hostage this proceeding until an entirely separate appellate matter concludes – probably a year or more from now. But this is St. John’s application, not an application for a port 345 miles away from Jacksonville, with legally and factually distinct issues. Crowley’s Motion flies in the face of section 310.151(4), Florida Statutes, which mandates that PRCC rate determinations must be immediately effective.

Unfortunately, Crowley’s requests are about delay, not justice or fairness. The Motion should be denied.

Respectfully submitted this 21st day of January, 2020.

*s/ George N. Meros, Jr.*  
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Tara R. Price  
Florida Bar No. 98073  
Holland & Knight LLP  
315 South Calhoun Street, Suite 600  
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Tara.Price@hklaw.com

*Attorneys for St. Johns Bar Pilot  
Association*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been served by electronic mail

this 21st day of January, 2020, to the following:

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s/ George N. Meros, Jr.  
George N. Meros, Jr.

# **Exhibit 1**

## Price, Tara R (TAL - X35631)

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**From:** Meros, George (TAL - X35622)  
**Sent:** Monday, January 20, 2020 12:37 PM  
**To:** Price, Tara R (TAL - X35631)  
**Subject:** Fwd: Email Chain

Sent from my iPhone

Begin forwarded message:

**From:** Marlene Stern <[Marlene.Stern@myfloridalegal.com](mailto:Marlene.Stern@myfloridalegal.com)>  
**Date:** January 20, 2020 at 12:27:11 PM EST  
**To:** Donna McNulty <[Donna.McNulty@myfloridalegal.com](mailto:Donna.McNulty@myfloridalegal.com)>, "[George.Meros@hklaw.com](mailto:George.Meros@hklaw.com)" <[George.Meros@hklaw.com](mailto:George.Meros@hklaw.com)>, Warren Husband <[whh@MHDFirm.com](mailto:whh@MHDFirm.com)>  
**Subject:** Email Chain

*[External email]*

Marlene K. Stern  
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[Marlene.Stern@myfloridalegal.com](mailto:Marlene.Stern@myfloridalegal.com)

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**From:** Cohen, Jordan S. <[JCohen@wickersmith.com](mailto:JCohen@wickersmith.com)>  
**Sent:** Tuesday, January 14, 2020 10:28 AM  
**To:** Ackermann, Amanda <[Amanda.Ackermann@myfloridalicense.com](mailto:Amanda.Ackermann@myfloridalicense.com)>  
**Cc:** Ahrendt, Anne <[Anne.Ahrendt@myfloridalicense.com](mailto:Anne.Ahrendt@myfloridalicense.com)>; Woodard, Krista <[Krista.Woodard@myfloridalicense.com](mailto:Krista.Woodard@myfloridalicense.com)>; Marlene Stern <[Marlene.Stern@myfloridalegal.com](mailto:Marlene.Stern@myfloridalegal.com)>; Donna McNulty <[Donna.McNulty@myfloridalegal.com](mailto:Donna.McNulty@myfloridalegal.com)>; Ed Tellechea <[Ed.Tellechea@myfloridalegal.com](mailto:Ed.Tellechea@myfloridalegal.com)>; Hechtman, Brandon J. <[BHechtman@wickersmith.com](mailto:BHechtman@wickersmith.com)>; Arthur, Ethan <[earthur@wickersmith.com](mailto:earthur@wickersmith.com)>; Carlo, Maria <[MCarlo@WickerSmith.com](mailto:MCarlo@WickerSmith.com)>  
**Subject:** RE: St. Johns

Ms. Ackermann,

Thank you for your prompt response. I acknowledge receipt of the Notice of Meeting / Workshop Hearing published in the FAR on 11/25/19 and the Investigative Report forwarded by Ms. Ahrendt.

I had independently obtained a copy of the Notice of Meeting / Workshop Hearing published in the FAR on 12/4/19.

Can you please advise if the 11/25/19 and/or 12/4/19 hearings were published in any newspaper or other means (other than the FAR) and if so when and where that occurred. Please also provide copies of all published notices concerning the St. Johns' Bar Pilots' Application.

Best,

Jordan S. Cohen, Esq.

Jordan S. Cohen  
Partner



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**From:** Ackermann, Amanda <[Amanda.Ackermann@myfloridalicense.com](mailto:Amanda.Ackermann@myfloridalicense.com)>

**Sent:** Monday, January 13, 2020 1:59 PM

**To:** Cohen, Jordan S. <[JCohen@wickersmith.com](mailto:JCohen@wickersmith.com)>

**Cc:** Ahrendt, Anne <[Anne.Ahrendt@myfloridalicense.com](mailto:Anne.Ahrendt@myfloridalicense.com)>; Woodard, Krista <[Krista.Woodard@myfloridalicense.com](mailto:Krista.Woodard@myfloridalicense.com)>; Marlene Stern <[Marlene.Stern@myfloridalegal.com](mailto:Marlene.Stern@myfloridalegal.com)>; Donna McNulty <[Donna.McNulty@myfloridalegal.com](mailto:Donna.McNulty@myfloridalegal.com)>; [ed.tellechea@myfloridalegal.com](mailto:ed.tellechea@myfloridalegal.com); Hechtman, Brandon J. <[BHechtman@wickersmith.com](mailto:BHechtman@wickersmith.com)>; Arthur, Ethan <[earthur@wickersmith.com](mailto:earthur@wickersmith.com)>; Carlo, Maria <[MCarlo@WickerSmith.com](mailto:MCarlo@WickerSmith.com)>

**Subject:** [EXTERNAL] RE: St. Johns

**Caution:** This email originated from outside the firm. Do not click on links or open attachments unless you verify that the contents are safe.

Mr. Cohen,

Good afternoon, and thank you for your email. We will make sure to add you to the mailing list and provide you with the information requested.

I apologize that you had difficulties downloading the Investigative Committee Report from our website, but it is my understanding that Ms. Ahrendt has provided you with an electronic copy. If you have any difficulties opening the file, please let me know.

Please let me know if I may be of further assistance.

Thank you,



**Mandie Ackermann**

Executive Director  
Board of Pilot Commissioners  
Board of Architecture and Interior Design  
Board of Auctioneers  
Office of Talent Agencies  
Phone: 850.717.1496

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**From:** Cohen, Jordan S. [<mailto:JCohen@wickersmith.com>]

**Sent:** Monday, January 13, 2020 11:04 AM

**To:** Ackermann, Amanda

**Cc:** Ahrendt, Anne; Woodard, Krista; Marlene Stern; Donna McNulty; [ed.tellechea@myfloridalegal.com](mailto:ed.tellechea@myfloridalegal.com); Hechtman, Brandon J.; Arthur, Ethan; Carlo, Maria

**Subject:** St. Johns

**Importance:** High

**FORMAL REQUEST PURSUANT TO FLA. STAT. 310.151(3) TO BE ADDED TO THE MAILING LIST AND PROVIDED NOTICE OF ALL ACTIVITY CONCERNING THE PENDING PILOTAGE RATE REVIEW APPLICATIONS FOR THE PORT OF JACKSONVILLE**

Ms. Ackermann,

In accordance with Fla. Stat. 310.151(3) I would like to be added to the mailing list for the requested rate changes for the Port of Jacksonville. Please provide me with direct notice of everything in relation to the pending application filed by the St. Johns Bar Pilot Association for rate change including but not limited to all filings, notices, meetings and hearings.

My email is: [jcohen@wickersmith.com](mailto:jcohen@wickersmith.com)

My physical mailing address is:

Jordan S. Cohen, Esq.  
Wicker, Smith, O'Hara, McCoy & Ford, P.A.  
515 E. Las Olas Blvd  
Suite 1400  
Fort Lauderdale, FL 33301

According to the public docket it appears that an Investigative Committee Report may have been filed on or about January 9, 2020; however, when I try to access it I get an error message.

<http://www.myfloridalicenses.com/dbpr/pro/pilotc/documents/2020%2001%2009%20Investigative%20Committee%20Report%20w%20attachments.pdf>

I would ask that an electronic copy of the Investigative Report be sent electronically.

Please let me know if you have any questions in this regard.

Best,

Jordan S. Cohen, Esq.

Jordan S. Cohen  
Partner



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